

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NANCY CROWDER, as attorney in fact for
Billy Vestal,
Plaintiff

vs

**MARSHALL COUNTY, TENNESSEE and
DONNELL KELLY,**
Defendant

Case No. 1:13-00003

Hon. Haynes

JURY DEMAND

MOTION TO RECONSIDER DISMISSAL OF STATE LAW CLAIMS

Billy Vestal, through his attorney in fact Nancy Crowder (plaintiff herein), respectfully moves for this Court to reconsider its order dismissing all of her state law claims (common law assault against Defendant Kelly (Count III) and GTLA against Defendant Marshall County) without the requisite weighing of any factors related to judicial economy, convenience or fairness. (D.E. 24).

This Court decided to decline supplemental jurisdiction over *all* the state law claims without weighing *any* factors and even though one of the defendants did not move for dismissal of the claim against it. In effect, this Court applied a *per se* rule that it will not entertain *any* GTLA claims *ever*. Plaintiff respectfully submits that this is an abuse of discretion in that the U.S. Supreme Court directed that a court “should consider and weigh in each case, and at every state of the litigation, the values of judicial economy, convenience, fairness, and comity.”

Relitigating the common law assault claim against Defendant Kelly (which is *not* a GTLA claim) and the GTLA claim against Marshall County (which it did not ask to be dismissed) would be immensely inconvenient and unfair as both claims arise from the same facts as the excessive force claim under §1983 and would call for the same exact proof.

Therefore, Plaintiff respectfully asserts that this Court abused its discretion in dismissing her common law assault claim against Defendant Kelly (Count III) without any weighing of the

factors mandated by the U.S. Supreme Court and by applying a comity factor in dismissing a non-GTLA claim. Plaintiff also asserts that this Court abused its discretion in dismissing her GTLA claim against Defendant Marshall County (Count IV) *sua sponte* (since Defendant Marshall County did not ask for it to be dismissed) and also because it did not apply any of the factors mandated by the Supreme Court.

Accordingly, Plaintiff moves that this Court reconsider its order (D.E. 24) dismissing all of her state law claims.

Respectfully submitted,

/s/ Jerry Gonzalez
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of Electronic Filing to the following:

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This the 10th day of June, 2013.

/s/ Jerry Gonzalez